No. 808732

SUPREME COURT
OF THE STATE OF WASHINGTON

FRED NOBLE and FAITH NOBLE, Husband and Wife,

Petitioners,

v.

SAFE HARBOR FAMILY PRESERVATION TRUST, a Washington Trust,

Respondent/Owner,

and

TILLICUM BEACH, et al,

Additional Respondents.

ERRATA - RESPONDENT TILLICUM BEACH

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The Statement of the Case, at pages 1-3 of the Brief of Respondent Tillicum Beach, should read in its entirety as follows:

II. STATEMENT OF THE CASE

"Brown" is the condemnor, who wants access to her landlocked property.

"Blue" is the condemnee. He is named by Brown as the owner of the original proposed way of necessity route.

"Green," a property owners' association, is the alternate condemnee. It is brought into the lawsuit as the owner of a proposed "more suitable" alternate route.

Brown needs to have an access road to her property. She sues Blue for a private way of necessity. Blue then answers by saying that there is a more suitable route. Even though Blue did not name or join the owner of the property he claims is more suitable, or describe this "more suitable" route, the parties know that this proposed route must be over property owned by Green.

As a matter of strategy, Blue intentionally avoids actually naming Green in his answer as the owner of the alternate route, or describing any route over Green's property. This is because Blue believes that if he does not actually plead the particulars of the alternate route, and name and join Green, he cannot be required to pay the legal fees of Green.

As a matter of strategy, in a supplemental pleading, Brown names and joins Green, the owner of the land where this alternate route lies. In that pleading, Brown says that the route over Blue's property is the route that is more suitable, and that the route over Green's property is not suitable.

Brown does this because she believes that if she does not name Green, and bring her into the lawsuit, then the first lawsuit (without Green as a party) might well result in a finding that the route over Green's property is the more suitable route. This would, of course, be binding on Brown's claim against Blue, but it would not be binding against Green, a non-party.

Brown would then have to bring a second lawsuit against Green, and if that happens, she knows that an outcome could be that the most suitable route is over the property of Blue, and Brown would as a result never have any access to her property.

Green has no choice in the matter. However, Green would much rather have one litigation that would cover all of the possibilities. Green believes it would be in a much better position to argue its case than Brown, preferably in one lawsuit that involves all three owners. Green also does not want to be in the position of having to be the respondent in a second lawsuit after a court, in the first lawsuit, without Green as a party, (hypothetically) rules that the more suitable route is across Green's property. Green reasonably has concerns about what a judge would do in the second lawsuit, under

those circumstances.

In our case, the Nobles are the condemnors (Brown), who need access to their property; Safe Harbor is the original condemnee (Blue), which owns property underlying the most suitable route, according to the unchallenged findings of the trial court; and Tillicum Beach Homeowners' Association (Green) is the alternate condemnee, which owns property underlying a route that was found not to be suitable for many reasons, again, in unchallenged findings of the trial court.

(End of *II. Statement of Case*).

Respectfully submitted this 9th day of February, 2009.

By: _____
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